

REMARKS

Favorable reconsideration and allowance of the subject application are respectfully requested. Claims 1-23, and 25 are pending in the present application, with claims 1, 13, and 14.

Double Patenting

Claims 1-3 are rejected based on obviousness type double patenting because the terminal disclaimer filed on January 4, 2010 does not comply with 37 CFR 1.321 (b) and (c). A new Terminal disclaimer is being submitted herewith to overcome this rejection.

Claim Rejections under 35 U.S.C. §112

The Examiner rejected claims 12 and 23 under 35 U.S.C. §112, first paragraph, as failing to meet the written description requirement. This rejection is respectfully traversed. Applicants submit that claim 12 is supported by the original disclosure wherein Figure 2 and the supporting discussion shows that the fuel sensor 18 is in the reservoir (which is defined in claim 1 as containing fuel and disposed with the first electrode). Additionally the third and fourth paragraphs of page numbered 27 of clean copy of the Substitute Specification supports claim 23 with respect to measuring the resistance of the fuel delivery device (reservoir). Thus claims 12 and 23 meeting the requirements of 35 USC 112, first paragraph.

Claim Rejections under 35 U.S.C. §103

The Examiner rejected claims 1-10 and 13 under 35 U.S.C. §103, as being

unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and claim 12 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Uchida et al (US 6,057,051) while claims 14-18 are rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067). Additionally claim 21 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067) and Mukerjee et al (US 2002/0168560) while claim 22 is rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067) and Uchida et al (US 6,057,051) and claims 23 and 25 are rejected under 35 U.S.C. §103, as being unpatentable over Jankowski et al (US 2003/0039874) in view of Tanaka (US 2002/0076586) and further in view of Keppeler (US 2002/0098399) and Anderten et al (US 4,164,172). These rejections are respectfully traversed.

In response to applicants arguments presented in the Amendment of January 4, 2010, the Examiner repeats the rejection of each of independent claims 1 and 13 based on the combination of Jankowski and Tanaka indicating, *inter alia*, that the applicants have ignored the rejection language wherein Tanaka has a fuel electrode "*surrounded by a hydrogen absorber acting as a fuel source*"(emphasis added by the Examiner at page 13 of the Office Action). The Examiner then once again states that it would have

been obvious to "incorporate a layer of material having fuel integrated therein onto an anode of the fuel cell of Janokowski because Tanaka teaches that this material can serve as a reservoir of fuel when the initial fuel source is not available".

Aside from applicants previous arguments related to objects of Jankowski, i.e. "enables a complete fuel cell device to be realized which can be readily attached to fuel and oxidant sources" which cannot be accomplished by the device of Tanaka, it is submitted that Tanaka has been improperly interpreted in the statement of the rejection and repeated in the Response to Arguments quoted above. That is fuel electrode 12 of Tanaka is not "surrounded by a hydrogen absorber" 11. Instead, the hydrogen absorber 11 is surrounded by the fuel electrode 12 which is precisely the opposite of the stated language of the rejection.

In response to applicants previous arguments concerning the obviousness of the combination of Jankowski and Tanaka, the Examiner proffers that the test for obviousness is "what the combined teachings of the references would have suggested to those of ordinary skill in the art." Using that test applicants submit the following: (1) the claims require an "integrated fuel cell" as does Jankowski but Tanaka does not have a device which is for the purpose of an integrated fuel cell; (2) One skilled in the art studying the disclose of the integrated structure of Jankowski would see that it is designed for a stack of fuel cells fabricated by combining MEMS and thin film deposition which allows for stacking by a use of manifolds to provide that one source of fuel 94 Figure 6 for example. When looking at Tanaka, one skilled in the art finds a fuel cell which is not able to be integrated and has no teaching of any type of layer which has fuel "**integrated** into the material" of the electrode or an adjacent layer as required by

claim 1 or a fuel delivery device as an **integral part of one of the electrodes** as required by claim 13.

Using any test given by the courts to 35 USC 103, there is nothing in the references to Jankowski and Tanaka that one skilled in the art would find obvious to combine the disclosures of these two references to provide the teachings of either claim 1 or claim 13.

Claims 2-10 depend from and contain all the limitations of claim 1 and are thus allowable for at least the same reasons.

With respect to the rejection of independent claim 14, the same features which define claim 1 over the references to Jankowski and Tanaka exist in claim 14 and even accepting for purposes of argument that the references to Keppeler (US 2002/0098399) and Sakai et al (JP 02-098067) have been correctly cited for their showing they add nothing toward meeting the claim features absent from Jankowski and Tanaka as discussed above in conjunction with claim 1. Claims 15-18 contain all the limitations of claim 14 and are thus allowable for at least the same reasons.

The claims 19-22 and 25 contain the limitations of claim 14 and no disclosure of the references to Mukerjee, Sakai, Anderten or Uchida adds subject matter which addresses the features of claim 14 which are absent from Jankowski and Tanaka, as discussed above.

Accordingly the allowance of this application containing claims 1-23 and 25 is respectfully requested.

CONCLUSION

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Martin R. Geissler, Applicants' Attorney at 1.703.621.7140 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3828 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully Submitted,



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